

United States Government

Department of Energy

memorandum

DATE: November 9, 2001

REPLY TO: Office of Environmental Policy and Guidance: Boulos: 6-1306
ATTN OF:

SUBJECT: Proposed Clean Air Act Stratospheric Ozone Protection Rule Related to the *De Minimis* Exemption for Laboratory and Analytical Uses, for Review and Comment

TO: Distribution

The purpose of this memorandum is to notify Department of Energy (DOE) program offices and field organizations of, and solicit comments on, the Environmental Protection Agency's (EPA's) notice of proposed rulemaking, "Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2002; and Extension of the De Minimis Exemption for Essential Laboratory and Analytical Uses through Calendar Year 2005".

EPA allocates essential-use allowances as an exemption to the phaseout of production and import of class I stratospheric ozone-depleting substances (ODSs). On November 1, 2001, EPA issued a notice of proposed rulemaking in the Federal Register (66 FR 55145), which proposed to allocate essential-use allowances for calendar year 2002. Most of the notice is concerned with essential use allowances for applications of ODSs that are not relevant to DOE operations. However, the notice also proposes to extend the general essential-use exemption for continued production and import of class I ODSs for laboratory and analytical applications through calendar year 2005. Earlier this year EPA issued a direct final rule providing an exemption for continued production and import of class I ODSs for laboratory and analytical applications through calendar year 2001 (66 FR 14760; March 13, 2001). The Office of Environmental Policy and Guidance (EH-41) issued a memorandum on the earlier rule on May 22, 2001 (available at <http://homer.ornl.gov/oepa/guidance/caa/odsmemo.pdf>). Use of stockpiled or recycled class I ODSs for laboratory and analytical uses is not affected by either the March 13, 2001, final rule or the November 1, 2001, proposed rule.

The November 1 notice proposes to amend Appendix G of 40 CFR 82, Subpart A to eliminate the following uses from the essential-use exemption for laboratory and analytical uses:

- (a) testing of oil and grease, and total petroleum hydrocarbons in water;
- (b) testing of tar in road-paving materials; and
- (c) forensic finger-printing.

The proposed elimination is based on a decision by the Parties to the Montreal Protocol (which includes the U.S.). EPA does not anticipate that elimination of the preceding uses will create hardship because it believes that class I ODSs are not used in the U.S. for uses (b) and (c), and that alternatives for use (a) are available that do not use class I ODSs.

EPA is also proposing to amend the certification requirement at 40 CFR 82.13(y) to provide that:

A laboratory customer purchasing a controlled substance under the global laboratory essential-use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for essential laboratory and analytical uses (defined at appendix G of this subpart) and not be resold or used in manufacturing.

Finally, EPA is proposing to add a prohibition to 40 CFR 82, Section 82.4, that would clarify that using virgin class I ODS produced under the authority of essential-use allowances or the exemption for laboratory and analytical uses for non-essential purposes is a violation of the Clean Air Act.

The November 1, 2001 notice can be found at <http://www.eh.doe.gov/oepa/rules/66/66fr55145.pdf> on the EH-41 Home Page.

Please review the notice and submit any comments by November 27, 2001, to Mr. Emile Boulos of my staff at: emile.boulos@eh.doe.gov; fax: 202-586-0955. In developing comments, please indicate the specific page and section of the preamble of the Federal Register to which each comment pertains. Questions or concerns regarding this memorandum should be directed to Mr. Boulos.

(original was signed by Andy Lawrence)

Andy Lawrence
Director
Office of Environmental Policy and Guidance